

STATE OF INDIANA)
) SS:
COUNTY OF PORTER) IN THE PORTER CIRCUIT COURT
) SITTING AT VALPARAISO
) PORTER COUNTY, INDIANA

IN RE: THE PETITION FOR THE)
ESTABLISHMENT OF THE 500)
NORTH CONSERVANCY DISTRICT) CAUSE NO. 64C01-0608-PL-7405

) Natural Resources Commission
) Administrative Cause No. 06-181C

**RECOMMENDED REPORT OF THE NATURAL RESOURCES COMMISSION
WITH RESPECT TO THE “PETITION FOR ESTABLISHMENT OF THE
500 NORTH CONSERVANCY” DISTRICT
REFERRED TO THE NRC ON OCTOBER 2, 2006**

I. PETITION, AND SUMMARY OF EVIDENCE RECEIVED AT PUBLIC HEARING

A. PETITION

On October 2, 2006, Hon. Mary R. Harper, Judge, Porter Circuit Court referred the Petition for the Establishment of the 500 North Conservancy District to the Natural Resources Commission. A public hearing was held on November 20, 2006 in Valparaiso, Indiana. On October 30, 2006, notice of the public hearing was published in the *Times*, and the *Chesteron Tribune*, newspapers of general circulation in Porter County.

On January 5, 2007, the Natural Resources Commission, through its Division of Hearings filed a Motion for Extension of Time for Filing Report by the Commission. On January 16, 2007, the Porter Circuit Court granted the motion and provided the Commission until March 30, 2007 to file its report.

The attorney for the Petitioner, William Ferngren, filed with the Porter Circuit Court a Motion to Withdraw “as attorney for Petitioner” in the matter of the petition. The Porter Circuit Court granted the motion.

B. SUMMARY OF EVIDENCE

(1) Petitioner and Supporting Evidence

Stephen L. Lucas, Hearing Officer for the Natural Resources Commission, opened the public hearing as scheduled in Valparaiso, Indiana on November 20, 2006 to receive comments on the proposed 500 North Conservancy District. He noted that the Petitioner, through its attorney, William Ferngren, requested a continuation of today's public hearing to allow time for continued discussions between the Petitioner and the City of Valparaiso to address unresolved matters. Lucas explained that, since the notice of public hearing had been published in newspapers of general circulation in Porter County the public hearing would proceed as scheduled. He explained that the timing of the continuance request did not allow sufficient time to publish another public notice, but encouraged the Petitioner to continue discussions with the City of Valparaiso.

Lucas extended the comment period to December 10, 2006. He then deferred to William Ferngren, attorney for the Petitioner, to present evidence in support of the petition.

William Ferngren, attorney for Petitioner, submitted the following exhibits: (1) 500 North Conservancy District, Duneland Group, Inc., Engineering Report (Petitioner's Exhibit A); (2) Aerial photograph of the proposed boundary of the 500 North Conservancy District (Petitioner's Exhibit B); (3) Aerial photograph with overlay of approved subdivision plat within the proposed district boundaries (Petitioner's Exhibit C); and (4) Valparaiso City Utilities, Board of Directors, February 14, 2006 Minutes (Petitioner's Exhibit D).

Ferngren explained that the proposed district boundaries encompass approximately 265 acres located at the southeast corner of State Road 49 and County Road 500 North in Porter County. "This property was recently annexed into the City of Valparaiso" and is within the municipal boundaries of the City of Valparaiso. Ferngren referred to Petitioner's Exhibit B, and noted several "cut outs" or existing residences along State Road 500 North that are not proposed to be a part of the district. He noted, however, that a map was provided to Judge Harper of the Porter Circuit Court in error, which included the existing residences except the "large farmstead". Ferngren indicated that Petitioner's Exhibit B depicts the "correct boundaries" of the proposed district.

Ferngren said that the eastern 160 acres are zoned R-1, single family residential. "The City of Valparaiso Plan Commission has granted primary plat approval for this particular area to include 329 single-family residential lots." He said the remaining approximate 100 acres in the western portion of the proposed district is zoned office-professional or office-park. "It's a fairly new classification for the City of Valparaiso", and "not intended to be a retail type of environment." Ferngren said that he was not aware of any specific plans for the 100-acre office park or any specific users identified other than those allowed by the City of Valparaiso's zoned classification.

Ferngren indicated that the infrastructure of the proposed district is "rather extensive to get under and across State Road 49", which would be undertaken by a private developer.

“The [proposed] conservancy district would then purchase the infrastructure and improvements from the developer, and the freeholders within the proposed district would then pay their special benefits tax to retire what we would anticipate to be 20 or 25-year bonds for the project.” Ferngren said meetings have been held with the City of Valparaiso. On February 14, 2006, the Valparaiso City Utilities Board of Directors “agreed to the extension of water and sewer to this parcel subject, however, to the various requirements that the City may impose on this particular area.” He indicated that the City of Valparaiso is not “entirely specific” on any requirements but “we expect those things we will be working through”. Ferngren noted that the City of Valparaiso has “repeatedly expressed” that waterlines within the proposed district would be under the city’s ownership. He also noted, as to the ownership of the sewer lines within the proposed district, “that is not totally resolved”.

Ferngren indicated that the City of Valparaiso has also repeatedly expressed that the freeholders within the proposed district would need “to be treated and to feel like they are regular Valparaiso water and sewer utility customers. Our thought and goal is that we can do that” through the proposed district. Ferngren said the City of Valparaiso has also expressed concerns regarding the breadth of the proposed district and the impact of its potential taxes on freeholders. Ferngren noted that Petitioner’s Exhibit A identifies, preliminarily, the impacts to the freeholders. The report also includes an economic and engineering feasibility study. “The infrastructure to develop this property is about \$12.2 million, which would include all of the work in order to complete the platted subdivision and the anticipated uses for the adjoining office park use.” The engineering report makes the assumption that for a single family home in Year 1 at \$225,000, the net assessed valuation (NAV), is estimated to \$25 million, with a projected 10-year growth period the total NAV preliminarily is estimated to be \$201,220,000. The commercial growth rate is assumed to “occur equally” over the same 10-year period. Ferngren noted that in Year 1 it is estimated that the projected residential tax bill will be approximately \$1,000. The tax bill “tails off in a rather linear fashion” with an estimated tax bill of \$478 per year per house at the end of Year 10. He noted that the numbers are preliminary and are assumptions based on “certain things happening.”

Ferngren called Charles Ray, Professional Engineer with Duneland Group, Inc. to provide evidence regarding the benefit to cost ratio of the proposed conservancy district.

Charles Ray explained that the grants and monies to expand sewer and water “really aren’t available anymore so the proposed district affords a chance for Valparaiso to expand the infrastructure. Actually, Valparaiso won’t be doing this, but the developer will.” The water and sewer lines would be sized to accommodate future annexations to the proposed district.

Ray stated that the stream that runs through the proposed district currently floods. To control this flooding a series of ponds would be constructed to be “able to control flooding and surging downstream”. With the associated costs of construction drainage controls, the benefits to cost ratio is 2.14.

Ferngren explained that Petitioner's Exhibit C notes the location of the proposed infrastructure improvements. The proposed sewer will route from the existing terminus in Valparaiso in and around the proposed subdivision. Ferngren noted that the Duneland Group, Inc. has worked with David Pilz, Engineering Director for the City of Valparaiso to find appropriate locations for the infrastructure. "Actual construction would naturally be subject to the City's specifications and requirements." Ferngren also explained that the purple line on Petitioner's Exhibit C represents the proposed sanitary force main. The residential subdivision and the office park area would ultimately feed into various lift stations throughout the subdivision and into the proposed force main.

Ferngren said the Petitioner has met with the City of Valparaiso and "at this time we do not have anything formal from the City of what [the City's] precise concerns are...so that we can appropriately respond. We have a general idea what they are, and that was the reason we asked for the continuance of this hearing." Ferngren noted that a draft of the utility service agreement was provided to the City of Valparaiso.

Ferngren concluded, "The information presented before you today is all the evidence that I have."

David L. Hollenbeck, representing the City of Valparaiso, said that the City of Valparaiso has annexed the area within the proposed 500 North Conservancy boundaries, and is "attempting to coordinate with the developers. This is something that we think needs to happen and should happen, and we appreciate the fact that this developer has stepped up." He said the cost of bringing the infrastructure to the site is the "biggest single force that's driving this proposed solution."

Hollenbeck noted that the proposed conservancy district is inside the boundaries of an existing municipality. He related that John Hardwick, the Utility Manager for the City of Valparaiso, has indicated that the City of Valparaiso "remains steadfast in its belief that this needs to be a seamless transition for the customer. We do not want customers in the city limits who are also in the [proposed] conservancy district and some how are being treated differently in terms of how they get their utility service."

Hollenbeck noted that the City's concerns have been discussed with the Petitioner, "but not in detail." He said one of the City's concerns is the multiple purposes listed in the petition. "I have been doing conservancy districts for 30 years, and I am well aware of the way they can grow in purpose and to continue to expand in terms of their role. The City doesn't want that to happen within the city limits. We don't want suddenly a conservancy district in the park business in the city limits." Hollenbeck said the City of Valparaiso, the developer, and Petitioner "need to focus on exactly what purposes the [proposed] district does want to be established for, and to the extent we can downsize that I think that will raise the comfort level of the City in terms of what we are doing."

Hollenbeck indicated that a "clearer picture" is needed regarding how the storm water infrastructure will be handled and the ownership of and responsibility for that infrastructure. Hollenbeck noted that the City of Valparaiso is also concerned about the "legacy" of the proposed conservancy district. "As I see it, as a conservancy district

proponent, the developer has the double advantage. On one hand [the developer] would normally get [the] infrastructure costs back each time [the developer] sells a lot over a period of five to ten years. This procedure enables [the developer] to get that investment back up front in the form of selling it to the conservancy district.” Hollenbeck noted that this advantage is not of concern to the City of Valparaiso. Hollenbeck noted that the market drives the cost of the lot. He said that once the project is built out and the developer is “long gone” the freeholders within the proposed district “are going to think they are in the City of Valparaiso, because they are”.

Referring to the preliminary analysis of a freeholder’s residential tax bill in Petitioner’s Exhibit A Hollenbeck said, “You are looking at [freeholders] that are going to have tax rates that are as much as 20% more than everybody else in the City.... It’s going to be the City Council and the Mayor’s responsibility to answer the questions when [the freeholders] ten years from now come knocking at City Hall and [asking] ‘How come my taxes are 15% higher than anybody else’s in the city? What am I getting for that 15% that no body else is paying for?’ The answer on the surface is going to be ‘nothing. You are getting the same sewer service; you are getting the same water service; you are getting the same storm water service.’” Hollenbeck said that this issue has been discussed with the Petitioner and developer, but has not been resolved. Hollenbeck noted that the City of Valparaiso will have to “deal” with the freeholders within the proposed district “down the road, and we are going to have to find a way to resolve it.”

Hollenbeck testified that another of the City of Valparaiso’s concerns is the “salability” of the bonds in the market place if the infrastructure is, in fact, conveyed to the City of Valparaiso. He said if the infrastructure is owned by the City of Valparaiso, and the City of Valparaiso is collecting the special freeholder tax that may be 15% more than those person residing in the Valparaiso city limits, but outside the proposed district. “Again, it falls back on the City to explain to [the freeholders] exactly what’s happening.”

Hollenbeck also noted that the City of Valparaiso “has a concern” if the situation arose that the conservancy district has problems “ten years down the road being able to paying its debt and the developer is gone”. He noted that “90% of this wouldn’t be a concern if this wasn’t in the City of Valparaiso.” Hollenbeck said that if the City of Valparaiso owns the utility infrastructure and the proposed conservancy district is not able to pay its bond issue “where are those [freeholders] going to turn for help in terms of the cost of that bond issue. They are going to come to the City I can guarantee you.”

Hollenbeck reiterated that if the proposed conservancy district was outside the city limits of Valparaiso, such as Nature Works Conservancy District at Aberdeen or Valparaiso Lakes Conservancy District at Flint Lake, “that wouldn’t be the City’s concern. But because [the proposed conservancy district] is inside the city limits there are a number of issues both present and future that we need to sort out and try to get some resolution. I just don’t want, as the City’s attorney, to have this thing affectively dumped on the City and the developer walk away...and we have to deal with these higher costs and expenses and these people that are upset about it.” Hollenbeck noted, however, that the City’s concerns are not “insurmountable”, but are issues to which the City of Valparaiso has

concern. Hollenbeck said that the City of Valparaiso would join the Petitioner's request for an extension of time for further discussions to resolve issues.

Hollenbeck then deferred to the City of Valparaiso's Engineering Director, David L. Pilz.

David Pilz spoke in favor of the establishment of the proposed conservancy district, "but with an asterisk because there are some very necessary conditions that have to be attached to any kind of approval for the establishment of the district." He noted that the purposes listed in the petition for establishment of the 500 North Conservancy District are "very broad and there needs to be a lot of definition applied to some of these purposes." He explained that the Valparaiso City Utility would not be "very happy" if the proposed conservancy district was to become involved in the treatment or disposal of sewage, because that is the Utility's responsibility, and the "[Utility] wants to maintain that [responsibility] in the city." Pilz also indicated that the Valparaiso City Utility has the same concern with the proposed district purpose of treatment of domestic water.

Pilz noted that the City of Valparaiso is a MS4 Community, "whereas, the City of Valparaiso has responsibilities for water quality issues of storm water drainage. I would hate to see those responsibilities undermined by something that is created by the establishment of the conservancy district." Pilz indicated that the same concern exists in regards to water quantity. "We have a Storm Water Management Board that deals with correction of a lot of problems that we have with storm water management. I would hate to see the conservancy district again become at odds with the objectives of the Storm Water Management Board." Pilz noted, however, that these issues "could be addressed and dealt with, and if we can make it a way where the conservancy district can be complementary, or in supplementary to, the objectives of the City and these boards...that would be great. I think it can be done, but it's going to take time to work out the details".

Pilz referred to his written comments filed with the Natural Resources Commission on October 27, 2006. [See page 13 of this report.] He requested that the documents establishing the proposed district contain "simple wording stating that the actions of the district are subject to the policies, procedures and ordinances of the City of Valparaiso and the Utility. That would go a long way towards alleviating these concerns. It would not define those as we need to do, but it would go a long way towards that."

Hearing Officer Lucas asked several questions regarding the drainage within the proposed conservancy district. He asked whether Johnson Ditch is the primary water course within the proposed district. Ferngren answered in the affirmative. Lucas then asked, "What does Johnson Ditch flow into?" Ferngren deferred to Charles Ray. Ray explained that Johnson Ditch ultimately flows into the Kankakee River. Lucas asked whether the entirety of the proposed district was within the Illinois Basin. Hollenbeck answered that the proposed district was located within the Kankakee Basin and not within the Lake Michigan Basin. Hollenbeck added that the proposed conservancy district is "on the cusp...but for man taking action Flint Lake would flow into Salt Creek and into Lake Michigan. Flint Lake was turned around in the early 1900s so it all goes into the Kankakee."

Ferngren said that the proposed subdivision within the proposed conservancy district, Inverness, has received primary plat approval. "It's in the [City of Valparaiso] so it's going to be subject to all of the City requirements for storm water management." Lucas clarified that his questions related to possible inter-basin transfers.

Ferngren indicated that the concerns raised by the City of Valparaiso are "surmountable" issues. "The proposed district wants to have a seamless transition as well. We do not want [freeholders] out there wondering who they call to fix a pipe and that sort of thing." Ferngren said the freeholder tax will "go away ultimately. He indicated that this fact does not answer the City of Valparaiso's concerns of a "catastrophic type of situation, but there is a significant amount of office-professional space that is adjoining the residential" component. Ferngren said the assessed valuation will be driven in "large part" from the office-professional area development. He said the bond "pay off" is a 20-year period of time and "we are comfortable with the build out that is proposed."

Ferngren concluded his presentation of evidence. He asked the City of Valparaiso to forward its opinions and concerns "so that we can address those in a timely manner. Then we can reconvene to discuss those issues." Hollenbeck said, "From my perspective, there is no need to reconvene this hearing." Hollenbeck asked whether written comments would be accepted. Lucas said that if the parties "come to a written concurrence" that can be tendered to the Natural Resources Commission and would be included in the record. Lucas indicated that if the Petitioner or the City of Valparaiso found it "of value" to schedule a second public hearing that would be accommodated.

Terri Price, a Water Planner for the Department of Natural Resources' Division of Water, noted that DNR maps show the City of Valparaiso entirely within the Lake Michigan Basin. Hollenbeck said, "No. That's not true." Price then noted that "most" of the City of Valparaiso is within the Lake Michigan Basin, and asked, "Would the water that's Lake Michigan water be diverted outside into the Kankakee River Basin to service this subdivision?" Hollenbeck answered, "No, because under current regulation...once the water gets in the sewer lines it goes back to [the City of Valparaiso's] sewage treatment plant that goes into the Lake Michigan Watershed in Salt Creek."

Price asked about the City of Valparaiso's comments regarding purposes of the proposed district. Hollenbeck indicated that the City of Valparaiso would "like to see the purposes downsized". Price suggested that the Petitioner remove the purpose of flood control. She explained that the Division of Water in its review of flood control it looks at structures such as dams. Price noted that the structures that are proposed for the control of storm water within the proposed district are viewed by the Division of Water as control of water drainage rather than flood control. "When we look at flood control, we look at being able to hold higher than normal pool and that kind of thing." Ferngren said that the Department's suggestion is "duly noted."

II. COMMENTS FROM STATE AGENCY AND OTHER GOVERNMENTAL ENTITIES

Indiana State Department of Health

Robert J. Hilton, PE, DEE, Supervisor, Plan Review, Sanitary Engineering filed on October 25, 2006 the following:

We have reviewed the petition we received on October 17, 2006. We believe this effort would be beneficial for the Porter County area and Indiana in general.

Indiana Utility Regulatory Commission

Erin Peters, Assistant General Counsel, filed on December 7, 2006 the following:

The General Counsel's Office and staff of the Indiana Utility Regulatory Commission (the "Commission" or "IURC") have reviewed your letter and the petition regarding the creation of the 500 North Conservancy District. This proposed conservancy district will, among other things, provide public water supply and the collection, treatment, and disposal of sewage. While the Commission has no objection to the 500 North's petition for the creation of a conservancy district, Indiana law provides that conservancy districts electing to provide public water supply under I.C. 14-33-20 "shall file the initial schedule of rates and charges to patrons of the district with the [Indiana Utility Regulatory] Commission." I.C. 14-33-20-14. Therefore, if in its district plan 500 North elects to provide public water supply under I.C. 14-33-20, then it must file an initial schedule of rates and charges with the Commission. In addition, the Commission notes that any new community public water supply system must fulfill the technical, managerial, and financial capacity requirements of 312 IAC 8-3.6 prior to making a submission to the Indiana Department of Environmental Management for a permit to construct.

As you know, a district established for the purpose of providing for the collection, treatment and disposal of sewage and other liquid wastes produced outside of the district boundaries must petition the IURC for territorial authority to engage in the services to territory outside the boundaries of the district. I.C. 14-33-1-2. However, since the petitioners seek to establish the territory of 500 North Conservancy District (and do not propose to collect or treat waste produced outside the district boundaries), it appears that the IURC is without jurisdiction over the petition as it relates to the establishment of the sewer service for this conservancy district.

Please be advised that the Commission's records indicate that the following regulated sewer utilities are currently serving Porter County: Centurion Corporation, Hoosierland Vistas, and South Haven Sewer Works, Inc. Other utilities and conservancy districts may provide sewer disposal service near the proposed 500 North area as well. As such, 500 North should be encouraged to fully explore the possibility of connecting to one of the existing sewer utilities, if it has not already done so.

Department of Natural Resources, Division of Water

Michael W. Neyer, P.E., Director of the Department's Division of Water filed on December 14, 2006, the following memorandum as the Division's comment regarding the Petition:

MEMORANDUM

Indiana Department of Natural Resources, Division of Water

Date: December 13, 2006

To: Steve Lucas, Hearing Officer
Division of Hearings

From: Michael W. Neyer, P.E.
Director, Division of Water

Subject: Establishment of the 500 North Conservancy District

The area proposed to be established as the 500 North Conservancy District is north of Valparaiso in Porter County. This parcel of land is located in Section 8, of Township 35 North and Range 5 West, contains approximately 265 acres, and is planned for both commercial and residential development. The subdivision will consist of 329 single-family dwellings. The petition submitted for the establishment of the 500 North Conservancy District contains one (1) freehold and proposes to be established for all nine (9) of the purposes.

As directed by Chapter 2, Section 17 of the Indiana Conservancy Act (IC 14-33), and pursuant to the Public Hearing on November 20, 2006, concerning the proposed establishment of the 500 North Conservancy District in Porter County, the Division of Water offers the following comments.

(1) Appears to be necessary

(1) Flood prevention and control

No structure is planned for construction within the boundaries of the proposed conservancy district that will hold back a substantial flood pool or provide flood control storage. At the November 20, 2006 public hearing, it was suggested by the Division of Water that this purpose be removed.

(2) Improving drainage

Storm water management is an important element in any land development plan. For an environmentally sound development, integration of storm water management and land use is essential. The 500 North Conservancy District will utilize natural forested wetlands and lowlands to enhance the storage of storm water. Storm water will be detained and controlled as it discharges to Johnson's Creek. The Conservancy District will then maintain the creek and ponds. The City Engineer for Valparaiso commented that he was in favor of the establishment of the Conservancy District with conditions. He believes the District should be complementary and supplemental to the City of Valparaiso's initiatives. Establishing for the purpose of improving drainage appears to be necessary.

(3) Providing for irrigation

No testimony on this purpose was provided at the November 20, 2006 public hearing nor was it discussed in the written material. It would be the suggestion of the Division of Water that this purpose be deleted.

(4) Providing water supply, including treatment and distribution, for domestic, industrial, and public use

This purpose appears to be necessary because water supplied by private wells in this particular area tends to have high iron and mineral content. The City of Valparaiso has agreed to provide treated water to the proposed development.

The water will originate from Lake Michigan and will be returned to the Lake Michigan Basin; therefore, it is not considered to be a water diversion nor subject to the provisions of the Water Resources Development Act.

(5) Providing for the collection, treatment, and disposal of sewage and other liquid wastes

The use of individual septic systems is not feasible since 30% of the site contains forested wetlands, ponds, and areas to be maintained as open space. The proposed Conservancy District plans to pump effluent to the Valparaiso Wastewater Treatment Plant eliminating the need for a package treatment plant and discharge into Johnson's Creek. Establishing for the purpose of collecting sewage appears to be necessary.

The consulting engineer for this project indicates that the entity being used for the collection and treatment of wastewater will discharge back into the Lake Michigan Basin.

(6) Developing forests, wildlife areas, parks, and recreational facilities if feasible in connection with beneficial water management

Minimal testimony was provided on this purpose at the November 20, 2006 public hearing. Additionally the written material provided did not discuss this purpose; therefore, it would be the suggestion of the Division of Water that this purpose be deleted.

(7) Preventing the loss of topsoil from injurious water erosion

The proposed development of the 500 North Conservancy District has been designed to be environmentally sensitive. Tree removal will be minimized and in some areas only the right-of-way along roads will be cleared. The District will create a series of swales, creeks, and detention ponds to filter sediment. Topography will be utilized in the design of the development to eliminate the need for mass grading and soil

compaction. Filter barriers will be used around storm water inlets. Other erosion control measures such as silt fencing and frequent reseeding will also be utilized. It appears that establishing for this purpose is necessary.

(8) Storage of water for augmentation of stream flow

No testimony on this purpose was provided at the November 20, 2006 public hearing nor was it discussed in the written material. It would be the suggestion of the Division of Water that this purpose be deleted.

(9) Operation, maintenance, and improvement of: (A) a work of improvement for water based recreational purposes; or (B) other work of improvement that could have been built for any other purpose authorized by this section

The establishment of a conservancy district appears to be necessary for the operation and maintenance of other purposes of the district. Homeowners associations usually do not have the ability to tax freeholders; nor have assets to provide maintenance and upkeep on common areas.

(2) Holds promise of economic and engineering feasibility

Municipal quality services will be provided for the eventual owners of homes and businesses in the 500 North Conservancy District. The Conservancy District will furnish the sanitary sewer lines and the water distribution lines within its service area. The average cost for water and sewer to individual owners will, in general, be less than if water wells were drilled and septic systems were installed, if even possible. Therefore, individual costs for water and sewer capital costs will be less on a collective basis or an aggregate basis than by putting in individual systems. Further noted, in the November 20, 2006 hearing the water and sanitary sewer lines will be sized for the utility lines to be extended. Thereby, this planning allows future benefit with only additional incremental costs. The City of Valparaiso will provide treated water and be responsible for the collection of wastewater.

(3) Seems to offer benefits in excess of costs

According to the Indiana Conservancy Act (IC 14-33-2-17c3), the commission shall make a determination and report to the court whether the proposed district meets the following conditions:

(3) The proposed district seems to offer benefits in excess of costs and damages for the purposes other than the following:

- (A) water supply;
- (B) storage of water for augmentation of stream flow;
- (C) sewage disposal.

The petition filed in Porter Circuit Court to establish the 500 North Conservancy District proposes to establish for all nine (9) purposes. Benefits in excess of costs and damages do not need to be established for: 1) water supply, 2) storage of water for augmentation of stream flow, and 3) sewage disposal.

It is the suggestion of the Division of Water that the purposes of: 1) flood prevention and control, 2) providing for irrigation, and 3) developing forests, wildlife areas, parks, and recreational facilities be deleted.

The only purposes that need to offer benefits in excess of costs are: 1) improving drainage, 2) preventing the loss of topsoil from injurious water erosion, and 3) operation, maintenance and improvement.

Improving drainage within the Conservancy District will be done by the utilization of existing forested wetlands and lowlands for storm water storage. Storm water will be detained and controlled as it discharges into Johnson's Creek. By minimizing tree removal and mass grading, the erosion of topsoil can be controlled. Reduction of erosion in the proposed Conservancy District will help control sediment runoff, and costs associated with the removal of downstream silt and sediment can be reduced. Most property owner's associations have difficulty conducting operation and maintenance activities. In many cases they lack experience and the inability to collect the annual assessments. Therefore, by establishing for the above-mentioned purposes the benefits would exceed the costs.

(4) Whether the public health will be served immediately or prospectively by the establishment of the district

According to the Indiana Conservancy Act (IC 14-33-2-17c4), the Commission shall make a determination and report to the court whether the proposed district meets the following conditions:

(4) Whether the public health will be served immediately or prospectively by the establishment of the district for any of the following purposes:

- (A) water supply;
- (B) sewage disposal;
- (C) storage of water for augmentation of stream flow;
- (D) any combination of these purposes.

A water supply system and sewage collection system will serve the public health immediately. Ground water varies in quality and quantity. The annual cost for all individuals to pump and treat water to an equivalent quality from individual wells will exceed the costs of the centralized alternative. The Porter County Soils Book classifies this site as severe for septic tank absorption fields. Pumping sewage to an off-site wastewater treatment plant is far superior to individual septic systems. Time will be needed for the establishment of open spaces, construction of detention ponds and the enhancement of wetland areas.

(5) Proposes to cover and serve a proper area

Chapter 3 of the Indiana Conservancy Act states "any area may be established as a district if each part of the district is contiguous to another part". The proposed 500 North Conservancy District is located in Section 8 of Washington Township, Porter County. As currently proposed the boundaries of the 500 North Conservancy District are contiguous and will cover and serve a proper area.

(6) Could be established and operated in a manner compatible with established Conservancy Districts, flood control projects, reservoirs, lakes, drains, levees, and other water management or water supply projects

According to testimony at the November 20, 2006 public hearing, it appears that the proposed 500 North Conservancy District could be established and operated in a manner compatible with other districts. The proposed district has been annexed into the City of

Valparaiso and does not appear to interfere with any other governmental or private organizations.

In a letter dated December 7, 2006 from the Indiana Utility Regulatory Commission (IURC) states that since the petitioners seek to establish the territory of 500 North Conservancy District (and do not propose to collect or treat waste produced outside the district boundaries), it appears that the IURC is without jurisdiction over the petition as it relates to the establishment of the sewer service for this conservancy district. The letter further states that the Conservancy District should be encouraged to fully explore the possibility of connecting to one of the existing sewer utilities. The proposed 500 North Conservancy District has already determined that wastewater will be collected and treated by the City of Valparaiso.

City of Valparaiso

David L. Pilz, Engineering Director filed by email on October 27, 2006 from dpilz@netnitco.net the following:

Thank you for the opportunity to comment re: the proposed 500 North Conservancy District. I am the Engineering Director for the City of Valparaiso and have a concern that I would like to voice. Note that Jon Costas, our mayor, and John Hardwick, General Manager of our City Utilities, may also choose to comment to you concerning concerns they may feel.

In general I support the establishment of the District. It has the possibility of being a vehicle that can greatly assist the City and developer in the proper development of the site.

In the material sent to me it indicates that the proposed district is within Porter County. Obviously this is true and needs to be stated because it is the County Court that will rule on the petition. However, the proposed District is also within the corporate limits of the City of Valparaiso. As such we have responsibility and authority concerning virtually all of the purposes listed in section III of the Petition. If the establishment of the District will supersede the authority of the City with regard to those items, then I oppose the establishment of the District.

This can be addressed quite simply by:

1. stating in the actions creating the District that the actions of the District are subject to the policies, procedures and/or ordinances of the City of Valparaiso, or
2. by being more descriptive and specific in the appropriate documents establishing the District. This will require dialogue between the petitioner and the City.

I trust that the NRC will address this matter and see that it is addressed to the satisfaction of the City of Valparaiso.

David L. Hollenbeck, attorney for the City of Valparaiso, filed, by facsimile, on December 15, 2006 the following:

With reference to the above-captioned matter and by way of supplementation of the testimony received during the recent hearing, I initiate this correspondence in my capacity as Valparaiso City Attorney. As you know, the proposed conservancy district is to be located entirely within the boundaries of the City of Valparaiso. This creates unique problems which unfortunately have not yet been resolved.

The city is concerned that an acceptable agreement be reached between the conservancy district and the city utility department for sewer and water service. Secondly, the city is concerned that the residents of the conservancy district will end up with significantly higher real estate property taxes for a period of many years. Five or ten years after the creation of the conservancy district, the petitioner for creation of the district will be gone, and the city will be left with the problem of explaining to the residents of the conservancy district why they are receiving the same sewer and water service but paying more than the rest of the city.

The city is also concerned that the pending petition for creation of the conservancy district proposes that the conservancy district be established for all nine statutory purposes. The city is unaware of the petitioner's intentions regarding proposed purposes other than sewer and water usage. Further clarification is needed before the city can give an opinion on the other purposes.

Obviously, the City of Valparaiso has a critically important involvement in this matter inasmuch as the district is proposed to be created within the boundaries of the city. Without resolution of these pending matters, the city cannot support creation of the 500 North Conservancy District.

III. RECOMMENDATIONS

The Porter Circuit Court referred the Petition to the Natural Resources Commission to "make a determination and report ...whether the proposed district meets the conditions set forth in IC 14-33-2-17, inclusive." Within this statutory structure, the following findings are recommended to the Porter Circuit Court with respect to the proposed 500 North Conservancy District:

PURPOSE: Flood prevention and control

The proposed district appears to be necessary.

The Department of Natural Resources at the public hearing held on November 20, 2006 suggested and reiterated in its Memorandum filed December 14, 2006 beginning on page 9 of this report, suggested that the purpose of flood prevention and control be removed as a purpose of the proposed conservancy district.

The Natural Resources Commission adopted Information Bulletin #36 (3rd Amendment) PROCEDURAL GUIDELINES FOR THE INTERPRETATIONS OF THE CONSERVANCY DISTRICT ARTICLE (IC 14-33), published February 1, 2005 in the INDIANA REGISTER at 28 IR 1601. The Information Bulletin provides review standards (28 IR 1604) for the purpose of flood prevention and control as inserted below.

2. C. Review Standards for Purpose of Flood Prevention and Control

One purpose for which a conservancy district can be established is flood prevention and control. IC 14-33-1-1(a)(1). In order to receive a favorable determination by the commission under IC 14-33-2-17 for the purpose of flood prevention and control, the petitioners must show the district would accomplish at least one of the following functions:

- (1) The removal of obstructions and accumulated debris from a waterway channel.
- (2) The cleaning or straightening of a channel.
- (3) The development of a new and enlarged channel.
- (4) The construction or repair of dikes, levees, or other flood protective works.
- (5) The construction of waterway bank protection.
- (6) The establishment of a floodway.

All works for the purpose of flood prevention and control must be coordinated in design, construction, and operation according to sound and accepted engineering practice so as to effect the best flood control obtainable that complies with IC 14-28-1-29.

There is clearly a need for drainage management for land restoration and maintenance; however, the evidence presented did not clearly differentiate between the purposes of flood prevention and control and improving drainage. Evidence was not presented that could be characterized as accomplishing *at least one* of the works for the purpose of flood prevention and control listed above. The proposed district for the purpose of flood prevention and control does not appear to be necessary.

The proposed district holds promise of economic and engineering feasibility.

Evidence was not presented to indicate that any works for the purpose of flood prevention and control would comply with the standards above. It cannot be determined whether the proposed district holds promise of economic and engineering feasibility.

The proposed district seems to offer benefits in excess of costs and damages.

A cost-benefit analysis was not presented during the hearing for this purpose. Testimony was not presented regarding the projected costs associated with developing the site or the installation of a flood prevention and control structure or work. While the current status of this development undoubtedly presents challenges, it does not preclude the Petitioner from providing some form of cost-benefit analysis. The evidence submitted is not sufficient to make findings whether benefits exceed costs and damages with respect to flood prevention and control.

The proposed district proposes to cover and serve a proper area.

The proposed 500 North Conservancy District is located in Section 8, of Washington Township, 35 North and Range 5 West, Porter County. As currently proposed, the boundaries of the district are contiguous.

For conservancy districts with the purpose of flood prevention and control, the Porter Circuit Court and the Natural Resources Commission in establishing the boundaries of the district “shall consider all watersheds affected by the flooding water” within counties with populations of 300,000 to 400,000. (IC 14-33-3-2) The Petitioner did not present evidence regarding the effects of flooding of Johnson Ditch in relation to other watersheds affected by this flooding.

Flood prevention and control structures would need to be constructed within the conservancy district boundaries in order for this purpose of this district to cover and serve a proper area. However, no evidence was presented that would indicate plans to construct such a structure; therefore, there is insufficient evidence to determine if the district proposes to cover and serve a proper area.

The proposed district could be established and operated in a manner compatible with established: (A) conservancy districts; (B) flood control projects; (C) reservoirs; (D) lakes; (E) drains; (F) levees; and (G) other water management or water supply projects.

Evidence was not presented to indicate that works or structures for the purpose of flood prevention and control are to be constructed within the boundaries of the proposed conservancy district. Johnson Ditch, which runs through the proposed district, currently floods. A series of ponds would be constructed in the proposed district to “control flooding downstream”. (Testimony of Charles Ray, p. 3 of this report) The Department characterizes retention and detention pond structures as storm water control drainage structures rather than flood control structures.

It cannot be determined whether the proposed 500 North Conservancy District could be established and operated in a manner compatible with other conservancy districts, flood control projects, reservoirs, lakes, drains, levees, and other water management or water supply projects.

PURPOSE: Improve drainage

Whether the proposed district appears to be necessary.

The implementation of controlled drainage is a component of best management practices regarding property development. Storm water management is an important element in any land development plan. Testimony given indicates that Johnson Creek (also referred to as Johnson’s Creek and Johnson Ditch), which runs through the proposed conservancy district area, currently floods. (Testimony of Pilz, p. 3 of this report.) Due to the rolling

hills within the proposed conservancy district storm water races to Johnson Creek causing breaching of the banks downstream.

According to the Engineering and Surveying Report, the proposed district will utilize existing natural forested wetlands and lowlands to enhance the storage of storm water. The storm water will be detained and controlled as it discharges to Johnson Creek, and a portion of the creek will be relocated to better define the banks. These enhancements will aid in controlling flooding and maintaining wetland areas for plants and wildlife. (Petitioner's Exhibit A, p. 1). The proposed district appears to be necessary for the purpose of improving drainage.

Whether the proposed district holds promise of economic and engineering feasibility.

A traditional drainage system has been proposed for Inverness: storm sewers and retention ponds. The storm water will be diverted to the retention ponds. Testimony indicates that the per lot cost for infrastructure for the subdivision is less than the average cost for developing comparably sized single-family residential lots in Porter County. The proposed drainage system technology has demonstrated economic and engineering feasibility.

Whether the proposed district seems to offer benefits in excess of costs and damages.

The impetus for the establishment of this district is the development of the Inverness community. It is evident that the development hinges on the restoration and stabilization of the land, which drainage management may be the first major hurdle. The Engineering and Survey Report provided a benefit to cost ratio of 2.14. (Petitioner's Exhibit A, p. 7) The proposed district seems to offer benefits in excess of costs and damages.

The proposed district proposes to cover and serve a proper area.

The proposed 500 North Conservancy District is located in Section 8, of Washington Township, 35 North and Range 5 West, Porter County. As currently proposed, the boundaries of the district are contiguous. The proposed boundaries for the purpose of drainage improvement encompass the development of Inverness. The proposed district proposes to cover and serve a proper area.

The proposed district could be established and operated in a manner compatible with established: (A) conservancy districts; (B) flood control projects; (C) reservoirs; (D) lakes; (E) drains; (F) levees; and (G) other water management or water supply projects.

The City of Valparaiso is within the Stimson Drain Watershed. The proposed conservancy district is located within the Kankakee Basin. (Testimony of Hollenbeck, p. 6 of this report.) Johnson Ditch is the primary water course within the proposed district, and ultimately flows into the Kankakee River. (Testimony of Ray, p. 6 of this report.)

Testimony indicates that the Indiana Department of Environmental Management designated the City of Valparaiso as an MS4 (Municipal Separate Storm Sewer System), and the City of Valparaiso is subject to compliance under 327 IAC 15-13. The City of Valparaiso's Storm Water Department and its Board are responsible for all comprehensive planning and management of sewer and storm water distribution systems throughout the City of Valparaiso.

The City of Valparaiso has responsibilities for water quality issues of storm water drainage. (Testimony of Pilz, p. 6 of this report.) The City of Valparaiso has concern regarding the ownership and responsibility of the storm water infrastructure after the developer has completed build out of the proposed Inverness development. (Testimony of Hollenbeck, p. 4 of this report.) Actual construction of the infrastructure for the Inverness subdivision would be subject to the City of Valparaiso's specifications and requirements." (Testimony of Ferngren, p. 4 of this report.) The proposed conservancy district's storm water infrastructure would be "subject to all of the City of Valparaiso's requirements for storm water management." (Testimony of Ferngren, p. 7 of this report.)

With Petitioner seeking approvals from the City of Valparaiso for the placement and construction of the infrastructure within the proposed district boundaries, it appears the proposed 500 North Conservancy District for the purpose of improved drainage can be established and operated in a manner compatible with established: conservancy districts, flood control projects, reservoirs, lakes, drains, levees, and other water management or water supply projects.

PURPOSE: Providing for irrigation

The proposed district appears to be necessary.

Evidence was not presented regarding the proposed purpose of providing irrigation. There is insufficient evidence to make findings whether the proposed district appears to be necessary.

The proposed district holds promise of economic and engineering feasibility.

Evidence was not presented regarding the proposed purpose of providing irrigation. There is insufficient evidence to make findings whether the purpose of providing for irrigation holds promise of economic and engineering feasibility.

The proposed district seems to offer benefits in excess of costs and damages.

Evidence was not presented regarding the proposed purpose of providing irrigation. There is insufficient evidence to make findings whether the purpose of providing for irrigation seems to offer benefits in excess of costs and damages.

The proposed district proposes to cover and serve a proper area.

Evidence was not presented regarding the proposed purpose of providing irrigation. There is insufficient evidence to make findings whether the purpose of providing for irrigation proposes to cover and serve a proper area.

The proposed district could be established and operated in a manner compatible with established: (A) conservancy districts; (B) flood control projects; (C) reservoirs; (D) lakes; (E) drains; (F) levees; and (G) other water management or water supply projects.

Evidence was not presented regarding the proposed purpose of providing irrigation. There is insufficient evidence to make findings whether the proposed 500 North Conservancy District for the purpose of providing for irrigation can be established and operated in a manner compatible with established: conservancy districts, flood control projects, reservoirs, lakes, drains, levees, and other water management or water supply projects.

PURPOSE: Providing water supply, including treatment and distribution, for domestic, industrial, and public use.

The proposed district appears to be necessary.

According to the Engineering and Surveying Report the ground water in the area of the proposed district can vary drastically in quantity and quality. It is “hard” due to the presence of dissolved minerals. (Engineering and Survey Report, Petitioner’s Exhibit A, p. 2) A source of potable water supply for the proposed district is the City of Valparaiso. The Valparaiso City Utility approved the extension of water utilities to the proposed 500 North Conservancy District. (Petitioner’s Exhibit D; see pp. 21, 22 of this report.)

The City of Valparaiso has concerns regarding the “legacy” of the water line extension, and specifically, the ownership of and responsibility for those lines. Discussions continue with the City of Valparaiso regarding the City of Valparaiso’s potential agreement to supply the proposed conservancy district area with potable water.

Evidence was not presented to indicate that the conservancy district proposes to treat water for distribution within its boundaries. With the limitation of the soils in the proposed district boundaries coupled with the variance of ground water quantity and quality, the proposed district appears to be necessary for the provision of water supply.

The proposed district holds promise of economic and engineering feasibility.

According to the Department Memorandum:

Municipal quality services will be provided for the eventual owners of homes and businesses in the 500 North Conservancy District. The Conservancy District will furnish ... the water distribution lines within its service area. The average cost for water ... to individual owners will, in general, be less than if water wells were drilled and septic systems were installed, if

even possible. Therefore, individual costs for water and sewer capital costs will be less on a collective basis or an aggregate basis than by putting in individual systems. Further noted, in the November 20, 2006 hearing the water and sanitary sewer lines will be sized for the utility lines to be extended. Thereby, this planning allows future benefit with only additional incremental costs.

[Department Memorandum, p. 10 of this report.]

The City of Valparaiso granted the preliminary plat for the Inverness development and associated office park. In Year 1 the projected residential tax bill will be approximately \$1,000. The tax bill would decrease in a linearly with an estimated tax bill of \$478 per year per house at the end of Year 10. The City of Valparaiso is concerned regarding the an approximate 15% to 20% disparity of tax bills assessed to those within the district and those outside the district but within the Valparaiso's corporate limits. The tax assessment disparity would need to be addressed to the satisfaction of all parties. The proposed district appears to hold promise of economic and engineering feasibility.

Whether the public health will be served immediately or prospectively by the establishment of the district

Groundwater can vary dramatically in quantity and quality in the proposed conservancy district area. A centralized water system that offers potable water represents a stable, safe, and chemically acceptable supply source. The City of Valparaiso, or another municipal water supplier, will provide municipal quality services for the community. The establishment of the district for water supply will serve the public health immediately.

The proposed district proposes to cover and serve a proper area.

The boundaries of the proposed conservancy district and the Inverness development are one in the same. The proposed district proposes to cover and serve a proper area.

The proposed district could be established and operated in a manner compatible with established: (A) conservancy districts; (B) flood control projects; (C) reservoirs; (D) lakes; (E) drains; (F) levees; and (G) other water management or water supply projects.

The City of Valparaiso is within the Stimson Drain watershed. Johnson Ditch is the primary water course within the proposed district, and ultimately flows into the Kankakee River. (Testimony of Ray, p. 6 of this report.) The proposed conservancy district is located within the Kankakee Basin. (Testimony of Hollenbeck, p. 6 of this report.) The majority of the City of Valparaiso is within the Lake Michigan Basin. The potable water, if supplied by the City of Valparaiso, originates from within the Lake Michigan Basin. It is proposed that sewage and other liquid wastes generated within the proposed conservancy district would be pumped, utilizing lift stations, to the Valparaiso Wastewater Treatment plant located in the Lake Michigan Basin. The Valparaiso

Wastewater Treatment discharges into Salt Creek, which ultimately empties into Lake Michigan.

The proposed district could be established and operated in a manner compatible with established conservancy districts, flood control projects, reservoirs, lakes, drains, levees; and other water management or water supply projects.

To note, however, if wastewater were diverted outside the Great Lakes Basin, the conservancy district would be required to comply with federal and state laws pertaining to inter-basin transfers.

The Indiana General Assembly has found "that a diversion of water out of the Great Lakes will impair or destroy the Great Lakes. ...Water may not be diverted from that part of the Great Lakes drainage basin within Indiana unless the diversion is approved by the governor of each Great Lakes state under 42 U.S.C. 1962d-20" (a subsection of the Federal "Water Resources Development Act")." IC 14-25-1-11.

The Water Resources Development Act provides in this subsection:

...[A]ny new diversions of Great Lakes water for use outside of the Great Lakes basin will have significant economic and environmental impacts, adversely affecting the use of this resource by the Great Lakes States and Canadian provinces ... It is therefore declared to be the purpose and policy of the Congress in this section...to prohibit any diversion of Great Lakes water by any State, Federal agency, or private entity for use outside the Great Lakes basin unless such diversion is approved by the Governor of each of the Great Lakes States.... No water shall be diverted or exported from any portion of the Great Lakes within the United States, or from any tributary within the United States of any of the Great Lakes, for use outside the Great Lakes basin unless such diversion or export is approved by the Governor of each of the Great Lake States.

PURPOSE: Provide for the collection, treatment, and disposal of sewage and other liquid wastes

Whether the proposed district appears to be necessary.

The proposed 265-acre 500 North Conservancy District would provide wastewater collection and treatment service to Inverness, a planned 329-lot residential development within 160 acres of the proposed district, and an "office-park" located within the remaining 105 acres. The boundaries of the proposed district encompass an area not currently served by a sewer utility. The area is also wholly within the corporate limits of the City of Valparaiso.

Utilizing individual septic systems in the proposed conservancy district area is not possible since 30% of the site contains forested wetlands, ponds, and parks maintained as open space. The 500 North Conservancy District proposes to pump effluent to the Valparaiso Wastewater Treatment Plant eliminating the need for a package treatment plant and discharge into Johnson's Creek. (Engineering and Survey Report, Petitioner's

Exhibit A, p. 1) The purpose for the collection of sewage and other liquid wastes appears to be necessary.

Whether the proposed district holds promise of economic and engineering feasibility.

Duneland Group, Inc. petitioned the Valparaiso City Utilities (VCU) Board of Directors to extend sewer utilities to the proposed conservancy district area. On February 14, 2006, the VCU approved the petition with requirements as set below.

- Both Water and Sewer are to be extended.
- Approval subject to Board's approval of Sewer Conservancy District plans. An agreement for [conservancy district]/VCU provisions is required.
- Water to remain ownership of VCU – Water Department. Water Department to construct. Developer will enter into a contract with VCU.
- Approval subject to capacity issue recommendation from City Engineer (Porter Hospital).
- Plans and Specifications to meet VCU/City design requirements. Developer to not all lift stations to meet new VCU requirements.

[Petitioner's Exhibit D]

The Petitioner testified that the City of Valparaiso is not "entirely specific" on the requirements, but indicated that discussions continue toward resolution. The proposed sewer line system would route from the existing terminus in Valparaiso in and around the proposed subdivision." (Testimony of Charles Ray, Profession Engineer, Duneland Group, Inc., p. 4 of this report.). The owner of the sewer lines, whether it be the proposed 500 North Conservancy District or the City of Valparaiso, has not been resolved. The Petitioner has provided a draft of a utility service agreement to the City of Valparaiso.

The Petitioner did not present evidence that the proposed conservancy district proposes to treat sewage that is produced within its boundaries. A sewer line extension servicing the residential subdivision and the office park area is proposed, and would ultimately feed into various lift stations throughout the subdivision and into a proposed force main. Testimony indicated that the sewer lines would be sized to accommodate future annexations to the proposed 500 North Conservancy District. (Testimony of Charles Ray, p. 3) This consideration for future annexations allows future benefit with only additional incremental costs. (Department Memorandum, p. 10 of this report.) Due to the lack of grants and monies available to expand sewers, the proposed conservancy district affords Valparaiso the chance to have infrastructure that can be, in the future, expanded to the east, north and south without cost to Valparaiso]. (Engineering and Surveying Report–Exhibit B, (Petitioner's Exhibit A, p. 7))

The approximate total cost for sewer infrastructure within the district is \$1,566,224 or \$4,746 per lot. (Engineering and Surveying Report–Exhibit A, (Petitioner's Exhibit A, p. 4)) The projected cost of developing the infrastructure for the community is lower than the average comparable development in Porter

County. (Engineering and Surveying Report (Petitioner's Exhibit A, p. 1)) The proposed district holds promise of economic and engineering feasibility.

Whether the public health will be served immediately or prospectively by the establishment of the district

The soils within the proposed district are "predominantly sandy, silty, clay. This soil is classified as severe for septic systems due to slope per the Porter County Soils Book. The suitability for individual septic systems is limited for a community with density as proposed for the Inverness subdivision. (Engineering and Survey Report (Petitioner's Exhibit A, p. 2) The annual cost for all individuals to pump and treat water to an equivalent quality from individual wells will exceed the costs of the centralized alternative. (Department Memorandum, p. 11 of this report.)

The proposed conservancy district efforts would be beneficial for the Porter County area and Indiana in general." (Indiana State Department of Health Letter, p.9 of this report.) With the development of Inverness and associated office park, the public health will be served immediately regarding the purpose of collection of sewage and other liquid wastes.

Whether the proposed district proposes to cover and serve a proper area.

The land within the proposed conservancy district is intended for subdivision and development, and the accomplishment of the purpose proposed and in the manner proposed would be necessary and desirable for the person acquiring and using the land after subdivision and development. (IC 14-33-2-17(d))

"Any area may be established as a district if each part of the district is contiguous to another part." (IC 14-33-3-1) The Inverness development is within the proposed district boundaries. As currently proposed, the boundaries of the 500 North Conservancy District appears to be contiguous and will cover and serve a proper area.

The proposed district could be established and operated in a manner compatible with established: (A) conservancy districts; (B) flood control projects; (C) reservoirs; (D) lakes; (E) drains; (F) levees; and (G) other water management or water supply projects.

The Indiana Utility Regulatory Commission (IURC) indicated in its letter filed on December 7, 2006 that sewer utilities currently serving Porter County are Centurion Corporation, Hoosierland Vistas, and South Haven Sewer Works, Inc. Other utilities and conservancy districts may provide sewer disposal service near the proposed 500 North area as well. The IURC encouraged the Petitioner to fully explore the possibility of connecting to one of the existing sewer utilities. (IURC Letter, p. 8 of this report)

Negotiations are ongoing regarding an agreement between the City of Valparaiso and the proposed conservancy district for the treatment of the proposed district's sewage and other liquid wastes produced within the district boundaries. The Valparaiso City Utility

has concerns regarding the proposed district being established for the purpose of treatment and disposal of sewage and other liquid wastes. The Valparaiso City Utility has authority and responsibility for the treatment and disposal of sewage and other liquid wastes within the corporate limits service, which it wishes to retain. (Testimony of Pilz, p. 6 of this report.) Evidence was not presented that would indicate that the proposed conservancy district intends to treat and dispose of sewage and other liquid wastes.

The proposed 500 North Conservancy District lies wholly within City of Valparaiso corporate limits. The freeholders within the proposed conservancy district would be assessed a special benefit tax to retire an anticipated 20 to 25-year project bond. (Testimony by Ferngren, p. 3 of this report.) The City of Valparaiso has concern regarding the disparity of utility fees assessed to freeholders within the proposed district and those persons not in the district but within the corporate city limits. (Testimony of Hollenbeck, p. 6 of this report.) A principle of the proposed conservancy district is to achieve a seamless transition regarding the “boundaries” of the proposed district and the City’s corporate limits. The special tax fee assessed to freeholders within the district would be eliminated due to “pay off” of the 20 to 25-year bond. (Testimony of Ferngren, p. 7 of this report.)

The City of Valparaiso requires an acceptable agreement between the proposed conservancy district and the Valparaiso City Utility (CVU) be reached regarding the treatment and disposal of sewage by the CVU. (Hollenbeck Letter, p. 14 of this report) The City of Valparaiso’s concerns are not “insurmountable” regarding the instant purpose of the proposed conservancy district. (Testimony of Hollenbeck, p. 5 of this report.)

With a resolution of the parties concerns, the proposed 500 North Conservancy District could be established and operated in a manner compatible with established conservancy districts, flood control projects, reservoirs, lakes, drains, levees, other water management or water supply projects. To note, however, if wastewater were diverted outside the Great Lakes Basin, the conservancy district would be required to comply with federal and state laws pertaining to inter-basin transfers. (See discussion on page 21 of this report.)

PURPOSE: To develop forests, wildlife areas, parks and recreational facilities if feasible in connection with beneficial water management

Whether the proposed district appears to be necessary.

30% of the proposed 500 North Conservancy District development contains forested wetlands and ponds. Retention ponds and open spaces are planned to be constructed.

Storage of storm water in the existing ponds and proposed ponds will ensure a constant flow of water into the receiving streams over a longer period of time. A more steady flow over a longer period of time enables a greater diversity of aquatic flora and fauna to thrive in more stable conditions. Such diversity promotes the enhancement of such water parameters as temperatures, stable depth of flow, and dissolved oxygen levels, which are equally important

to the stability of the plants and wildlife along the stream. The steady flow will also reduce initial surges that cause downstream flooding. Proposed ponds will reduce silt being deposited in the creek and being carried downstream.

[Engineering and Surveying Report (Petitioner's Exhibit A, p. 3)]

The proposed conservancy district will manage and maintain the natural areas, which will protect the integrity of water management infrastructure. The proposed district appears to be necessary, because the costs and expertise required to properly manage and maintain the forested wetlands, ponds, and open spaces may not be readily found in a homeowner's association.

Whether the proposed district holds promise of economic and engineering feasibility.

The proposed district will incorporate open spaces and recreational features in conjunction with the storm water management plan. Storm water management is contingent upon maintaining the planned open space and natural areas for infiltration of rainwater. Traditional storm water management systems paired with ponds and open spaces are proven to be economical and engineering feasible.

Whether the proposed district seems to offer benefits in excess of costs and damages.

An overall cost-benefit analysis was not presented during the hearing for the purpose developing forests, wildlife areas, parks and recreation facilities. Evidence presented in purposes regarding the proposed storm water and wastewater management systems clearly illustrates that the benefits associated exceed costs. The proposed district for the instant purpose, in connection with beneficial water management, seems to offer benefits in excess of costs and damages.

The proposed district proposes to cover and serve a proper area.

The planned common areas, forests, and ponds for the Inverness development are within the proposed district boundaries; therefore, the district, as proposed, covers and serves a proper area.

The proposed district could be established and operated in a manner compatible with established: (A) conservancy districts; (B) flood control projects; (C) reservoirs; (D) lakes; (E) drains; (F) levees; and (G) other water management or water supply projects.

The City of Valparaiso has concern regarding the proposed instant purpose. The Valparaiso Parks and Recreation Department is responsible for 19 different park lands representing both community and neighborhood parks within the Valparaiso corporate limits. The proposed conservancy district is within Valparaiso's corporate limits. The City of Valparaiso does not want a conservancy district in the park business within its corporate limits. (Testimony of Hollenbeck, p. 4 of this report.)

The Petitioner did not provide evidence regarding this purpose other than what is contained in the Engineering and Surveying Report as inserted in the findings regarding the necessity of this purpose. (Petitioner's Exhibit A, p. 3) There is insufficient evidence to determine whether the proposed district for this purpose can be established and operated in a manner compatible with established: conservancy districts, flood control projects, reservoirs, lakes, drains, levees, and other water management or water supply projects.

PURPOSE: Preventing the loss of topsoil from injurious water erosion

The proposed district appears to be necessary.

The proposed development utilizes the natural landscape to enhance the implementation of erosion control measures. The terrain within the proposed boundaries is rolling hills, and the construction design for the development focuses on minimizing movement, compaction and mass grading of the soil. Development has been designed to minimize tree clearing. Soil compaction is a barrier of water infiltration. Filter barriers will also be used around storm inlets. An objective of 500 North Conservancy District is the preservation of a stable landscape.

The land within the proposed conservancy district is intended for subdivision and development, and the accomplishment of the purpose proposed and in the manner proposed would be necessary and desirable for the person acquiring and using the land after subdivision and development. (IC 14-33-2-17) The proposed conservancy district affords the financing mechanism for maintaining the permanent erosion control measures.

The proposed district holds promise of economic and engineering feasibility.

The Inverness development emphasizes minimizing soil movement during construction and utilizing silt filters. The establishment of landscape groundcover, retention ponds, and minimal removal of trees will not only hold topsoil in place, but will prevent high velocity water scouring the landscape. Erosion prevention will alleviate future costs of dredging the existing and proposed retention ponds, and reduce sediment downstream.

The proposed enhancement of ponds, construction of additional retention ponds, and minimal tree removal within hilly terrain for drainage and erosion control has demonstrated economic and engineering feasibility.

The proposed district seems to offer benefits in excess of costs and damages.

A cost-benefit analysis was not presented during the hearing regarding this purpose. The benefits gained from preventing the loss of topsoil from injurious water erosion in

relation to costs and damages are partly intrinsic in nature and may be partly impossible to quantify.

While the current status of this development undoubtedly presents challenges, it does not preclude the Petitioner from providing some form of cost-benefit analysis. The evidence submitted is not sufficient to make findings whether benefits exceed costs and damages with respect to presenting the loss of topsoil from injurious water erosion.

The proposed district proposes to cover and serve a proper area.

The boundaries of the proposed conservancy district and the Inverness development are one in the same. The erosion control plan is within the boundaries of Inverness. The proposed district proposes to cover and serve a proper area.

The proposed district could be established and operated in a manner compatible with established: (A) conservancy districts; (B) flood control projects; (C) reservoirs; (D) lakes; (E) drains; (F) levees; and (G) other water management or water supply projects.

The development of Inverness and associated office park will focus on minimizing movement, compaction, mass grading of the soil, and minimal tree clearing. These are activities can be characterized as best management practices regarding property development. It appears that the proposed 500 North Conservancy District for the purpose of storage of water for augmentation of stream flow can be established and operated in a manner compatible with established: conservancy districts, flood control projects, reservoirs, lakes, drains, levees, and other water management or water supply projects.

PURPOSE: Storage of water for augmentation of stream flow

The proposed district appears to be necessary.

Evidence was not presented regarding the proposed purpose of storage of water for augmentation of stream flow. There is insufficient evidence to make findings whether the proposed district appears to be necessary for the purpose of storage of water for augmentation of stream flow.

The proposed district holds promise of economic and engineering feasibility.

Evidence was not presented regarding the proposed purpose of storage of water for augmentation of stream flow. There is insufficient evidence to make findings whether the purpose of storage of water for augmentation of stream flow holds promise of economic and engineering feasibility.

Whether the public health will be served immediately or prospectively by the establishment of the district for any of the following purposes:

Evidence was not presented regarding the proposed purpose of storage of water for augmentation of stream flow. There is insufficient evidence to make findings whether the public health will be served immediately or prospectively by the establishment of the district for the purpose of storage of water for augmentation of stream flow.

The proposed district proposes to cover and serve a proper area

Evidence was not presented regarding the proposed purpose of storage of water for augmentation of stream flow. There is insufficient evidence to make findings whether the purpose of the proposed district for this purpose would cover and serve a proper area.

Whether the proposed district could be established and operated in a manner compatible with established: (A) conservancy districts; (B) flood control projects; (C) reservoirs; (D) lakes; (E) drains; (F) levees; and (G) other water management or water supply projects.

Evidence was not presented regarding the proposed purpose of storage of water for augmentation of stream flow. There is insufficient evidence to make findings whether the proposed 500 North Conservancy District for the purpose of storage of water for augmentation of stream flow can be established and operated in a manner compatible with established: conservancy districts, flood control projects, reservoirs, lakes, drains, levees, and other water management or water supply projects.

PURPOSE: Operation, maintenance, and improvement of:
(A) a work of improvement for water based recreational purposes; or
(B) other work of improvement that could have been built for any other purpose authorized by this section.

The proposed district appears to be necessary.

The proposed conservancy district affords the financing mechanism for operation, maintenance, and improvements of the development. The proposed district appears to be necessary.

The proposed district holds promise of economic and engineering feasibility.

A conservancy district has the ability to tax and receive government funds for project development and maintenance. The conservancy district would be financially capable of maintaining and preserving the common areas for recreational purposes as well as acquiring the developmental expertise required for future works of improvement.

The proposed district seems to offer benefits in excess of costs and damages.

A cost-benefit analysis was not presented during the hearing for this purpose. Testimony was not presented regarding the projected costs associated with operation, maintenance, and improvement of a work of improvement for water based recreational purposes or any other authorized purpose. While the current status of this development undoubtedly presents challenges, it does not preclude the Petitioner from providing some form of cost-benefit analysis. The evidence submitted is not sufficient to make findings whether benefits exceed costs and damages with respect to flood prevention and control.

The proposed district could be established and operated in a manner compatible with established: (A) conservancy districts; (B) flood control projects; (C) reservoirs; (D) lakes; (E) drains; (F) levees; and (G) other water management or water supply projects.

The City of Valparaiso requests that the proposed 500 North Conservancy District focus its purposes to which it wishes to be established. “Downsizing” the purposes to which the proposed district would be established would raise the comfort level of the City of Valparaiso”. (Testimony of Hollenbeck, p. 4 of this report.)

However, evidence was not presented regarding this proposed purpose. There is insufficient evidence to make findings whether the proposed 500 North Conservancy District for the this purpose can be established and operated in a manner compatible with established: conservancy districts, flood control projects, reservoirs, lakes, drains, levees, and other water management or water supply projects.

Dated: March 2, 2007

Jennifer M. Kane
Paralegal
Natural Resources Commission

Stephen L. Lucas
Hearing Officer
Natural Resources Commission